

REMARKS

Claims 1, 5, 6, 12, 15-21, 23-28, 30-33, 35, 37 and 39 are pending. See Applicants' Amendment filed in October 2005 for a full list of the pending claims of the present application. For reasons provided herein, Applicants respectfully request reconsideration of the current 35 USC 103(a) rejection of the claims of the present application. Applicants respectfully submit that the present application is in condition for allowance.

Claim Rejections Under 35 USC 103(a)

Claims 1, 5, 6, 12, 15-21, 23-28, 30-33, 35, 37 and 39 are rejected under 35 USC 103(a) as being obvious over U.S. Patent No. 5,523,045 issued to Kudert et al. in view of Japanese Patent Application Publication No. JP 03-041135 A of Fukui et al. and in further view of U.K. Patent Application Publication No. 2,295,617 A of Branch.

Applicants respectfully request reconsideration and removal of this rejection for the following reason. There is no fair disclosure in any of these references which would cause one of ordinary skill in the art using only routine skill and knowledge to combine them in the manner required by the rejection stated in the Office Action.

The newly cited Kudert patent discloses the production of hot fill blow-molded containers. The containers (see FIGs. 2 and 2A) are produced as follows. First, several different types of molten materials are simultaneously injected (ie., "co-injected") into a cavity of an injection mold under high pressure (see FIGs. 130-135 and column 7, Table IV) to form a multi-layer intermediate article commonly referred to as a "parison" or "preform" (see FIGs. 1 and 1A). This intermediate article is permitted to harden and is then removed from the mold and located

in blow molding apparatus. Thereafter, the intermediate article is heated and subjected to stretch-blow molding in a blow mold to produce a container such as a hot-fillable bottle.

Co-injection of different types of molten materials in an injection mold under high pressure is a very sensitive and complicated process, as demonstrated for instance by FIGs. 11-148 and corresponding description provided by the Kudert et al. patent. The object of Kudert et al. is to form continuous layers through the length of the intermediate article without the layers bleeding through one another or becoming mixed with one another. The gas barrier layer must be continuous, uninterrupted and entirely embedded in the walls of the injection molded intermediate article/blown container if it is to provide its intended purpose. These layers also must remain in tact during the blow molding process when the walls of the intermediate article are stretched, thinned, and radially and longitudinally expanded. The layers also must not delaminate during these processes or when the containers are filled, handled, and used. Slight changes to the composition of the layers can destroy the desired outcome.

FIG. 3 of the Kudert et al. patent provides a cross-sectional view of a wall of the blow molded container. The wall includes: innermost and outermost “structural layers” (A, B); an embedded layer (C) of oxygen barrier material; and adhesive layers (D, E) securing the oxygen barrier layer to the structural layers. The only disclosure provided by the Kudert et al. patent with respect to talc is on column 30, lines 13-15, which read as follows:

“... The structural layers may contain fillers, such as calcium carbonate or talc, or pigments, such as titanium dioxide.”

Applicants respectfully submit that this is an extremely vague and non-enabling disclosure of talc filler. One of ordinary skill in the art is neither taught the content of talc, the specific location of the talc layer, nor the type of talc. In addition, considering the complicated

and highly sensitive process of co-injecting different molten materials without bleed through or mixing and then blow molding without bleed through or mixing of the different layers, one of skill in the art is not provided with sufficient information by Kudert et al. relative to the use of a talc filler.

In an attempt to overcome the deficiencies of the Kudert et al. patent discussed above, the Fukui et al. and Branch references are cited in the Office Action and are combined with the Kudert et al. patent. Applicants respectfully submit that there is no fair disclosure provided by either of the Fukui et al. or Branch references that would cause one of ordinary skill in the art to think of combining them with the Kudert et al. patent in the manner required by the rejection stated in the Office Action.

The newly cited Fukui et al. reference discloses a resin composition that is molded into a single layer container. The resin composition is obtained by mixing: 100 parts by weight of PP powder; 1 to 120 parts by weight of talc; 0.01 to 2.0 parts by weight of a 6-hydroxycholesterol compound; and 0.01 to 0.05 parts by weight of a lubricant and/or antistatic agent. This powder mixture is then molded. Molding of the powders is believed to be accomplished by compression molding techniques.

Fukui et al. fail to disclose a molten material for being co-injected into an injection mold under high pressure with other different molten materials and fails to disclose the use of the material in a multi-layer container. In addition, Fukui et al. clearly fail to disclose whether or not co-injecting of the powder mixture is possible or if the powder mixture will bleed through or mix with other molten materials being simultaneously co-injected under pressure into an injection mold. Accordingly, there is no fair teaching by Fukui et al. or Kudert et al. to one of skill in the

art that suggests the powder mixture of Fukui et al. could be co-injected under pressure in the sensitive and complicated process required by the Kudert et al. patent. Also, neither reference discloses the precise location of this layer.

The Branch reference discloses a particular type of talc for use in forming a single layer shoulder of a tooth paste tube. Similar to Fukui et al., Branch fails to disclose whether or not its composition could be simultaneously co-injected with other different molten materials under pressure in an injection mold and then subjected to blow molding without bleed through, mixing or delamination with the other layers of a multi-layer blow-molded container. Accordingly, there is no fair teaching by Branch or Kudert et al. to one of skill in the art that suggests the composition for a single layer tooth paste shoulder disclosed by Branch could be co-injected under pressure in the process required by the Kudert et al. patent. Also, neither reference discloses the precise location of this layer.

Accordingly, Applicants respectfully submit that it would not be obvious for one of ordinary skill in the art relying only on routine skill and knowledge to produce the invention required by the claims of the present applications based on the disclosures provided by Kudert et al., Fukui et al., and Branch. The amount, type and location of talc is not disclosed by Kudert et al. and an enabling disclosure for the use of a talc filler is simply not provided by the Kudert et al. patent. Fukui et al. disclose a powder mixture that is not useful in the co-injection process of the Kudert et al. patent; thus, one of skill in the art would have no reason to combine the teachings of these references. Finally, there is no fair disclosure in Branch suggesting that its composition could be co-injected as required by the Kudert et al. patent; thus, one of skill in the art would have no reason to combine the teachings of these references. Still further, none of

these patents state the precise location of the talc-filled layer as required by the claims of the present application.

For these reasons, Applicants respectfully submit that claims 1, 5, 6, 12, 15-21, 23-28, 30-33, 35, 37 and 39 of the present application are patentable and are not-obviated by Kudert et al. in view of Fukui et al. and further in view of Branch. Applicants respectfully request reconsideration and removal of the rejection.

In addition, Applicants submit yet another reason for the allowance of method claims 1, 5, 16, 17, 27, 28, 30-32 and 37 of the present application. The Office Action states:

“... the claimed aspects of the talc filled layer reducing absorption and providing stiffness are directed to intended use of the layer, which are given little patentable weight.”

Applicants respectfully submit that such limitations are proper in method claims and positively recite process limitations. Such limitations should not be ignored and should be given patentable significance. None of the cited references discloses the method and process limitations recited by method claims 1, 5, 16, 17, 27, 28, 30-32 and 37 of the present application. Applicants respectfully request reconsideration of these limitations with respect to the method claims and removal of the rejection.

Conclusion

In view of the above remarks, Applicants respectfully submit that the 103(a) rejection has been overcome and that the present application is in condition for allowance. Fair reconsideration and a favorable action on the merits are therefore requested.

Please charge any deficiency or credit any overpayment for entering this Response to our deposit account no. 08-3040.

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